

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** October 12, 2018

**Thru:** Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director

**From:** Steve Hagle, P.E., Deputy Director  
Office of Air

**Docket No.:** 2017-1641-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 116, Control of Air Pollution by Permits for New Construction or  
Modification  
Chapter 122, Federal Operating Permits Program  
HB 4181: Update to Applicable Requirements for New Source Review and  
Federal Operating Permits  
Rule Project No. 2018-003-116-AI

### **Background and reason(s) for the rulemaking:**

This rulemaking is intended to address implementation of House Bill (HB) 4181, 85th Texas Legislature, 2017. HB 4181 was signed by the Governor on June 1, 2017, and effective on September 1, 2017. HB 4181 amended Texas Health and Safety Code (THSC), §382.055 to provide the option for the Texas Commission on Environmental Quality (TCEQ, agency, or commission) to use an electronic method of communication to send renewal notices for new source review (NSR) permits, if the commission develops a system that reliably replaces registered or certified mail as a means of verifying receipt of the notice. HB 4181 also amended THSC, §382.0562(a) to allow the commission to send notice of a proposed final action on a federal operating permit (FOP) by electronic communication. Rulemaking is necessary so that commission rules reflect these new options for transmitting these notices and are consistent with the relevant statutes.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

In accordance with the provisions of HB 4181, the adopted amendments would revise air permitting procedures for NSR permit renewal notices to provide TCEQ with the option of using an electronic method to send these notices to permit holders. The rulemaking would also revise procedures to allow for an electronic method of providing FOP proposed final action notices. The rulemaking also includes a number of other revisions to Chapters 116 and 122, which are unrelated to HB 4181 and are discussed under section (C) below.

#### **B.) Scope required by federal regulations or state statutes:**

To implement HB 4181 and the corresponding amendments to THSC, §382.055 and §382.0562, the rulemaking would amend Chapter 116, Subchapter D, §116.310 to provide for electronic NSR permit renewal notices; and would amend Chapter 122, Subchapter D, §122.345 to provide for electronic FOP proposed final action notices.

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**C.) Additional staff recommendations that are not required by federal rule or state statute:**

Staff recommended additional amendments take place within this rulemaking project as a matter of efficiency and with the purpose of updating requirements applicable to the NSR and FOP programs. While the additional amendments are not required by federal regulations or state statutes, they were recommended to bring clarity to specific requirements for the permitting programs and correct inaccuracies in the rules which have been identified over the years. Staff recommendations are as follows:

Permitting and Program Amendments: The rulemaking would amend existing language in §116.164, to clarify that projects will not be subject to prevention of significant deterioration (PSD) review for an increase in greenhouse gas (GHG) emissions alone; but that an increase in GHG emissions may be subject to PSD review if a different, non-GHG pollutant has an increase which triggers PSD review.

This rulemaking also would amend Chapter 116, Subchapter F, to update rule language concerning standard permit registration requirements to address changes at existing facilities and the addition of new facilities. Specifically, §116.611(a) would be amended to require standard permit registrations to be submitted electronically, if an electronic method is available. This change would reflect the current submittal process of certain standard permit registrations received by the TCEQ through ePermits and allows for the commission to implement electronic registration for additional standard permit types. Additionally, rule language in §116.615 would be revised to clarify the procedures to add a new facility or update an existing standard permit registration when changes are made at an existing authorized facility.

This rulemaking also would amend §122.241 and §122.505 to allow for the use of an electronic method to transmit renewal notices to permit holders for Site Operating Permits and General Operating Permits, respectively.

Miscellaneous Items: The rulemaking would update additional sections within Chapters 116 and 122 to correct minor administrative issues and clarify requirements. This would include adopted changes as follows:

- §116.160 and §116.198 to update cross references to rule sections which are being deleted or renumbered as part of this adopted rulemaking;
- §116.196 to clarify renewal requirements for Plant-wide Applicability Limit (PAL) Permits and make these consistent with general permit renewal requirements in Chapter 116, Subchapter D, Permit Renewals, such as, the requirement for the agency to send a renewal notification letter to the permit holder, and to be consistent with federal rules regarding renewal of PAL permits;
- §122.143 to revise a reference to annual compliance certifications;
- §122.146 to clarify that a permit holder needs to submit a compliance certification within 30 days of a permit being voided or after a change of ownership;
- §122.165(a) to include: requests to void an issued permit, requests to withdraw a permit application, off-permit notices, and operational flexibility notices, within

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the list of documents that require a signed certification of accuracy and completeness;

- §122.204(a) to reduce vagueness in rule language which relates to temporary sources;
- §122.210 to allow, during the permit revision, multiple permits at a site to be combined into one permit or a single permit to be separated into multiple permits;
- §122.320 to revise grammatical errors, inaccurate references, and other minor administrative issues;
- §122.320(b) to instruct the applicant that a Statement of Basis must be made available for review during public notice; and
- §122.503(c)(1)(A) and §122.504(a)(2)(A) to add a reference to 30 TAC Chapter 106 alongside the current reference to Chapter 116.

**Statutory authority:**

- THSC, Texas Clean Air Act (TCAA), §382.002, Policy and Purpose;
- THSC, §382.011, General Powers and Duties;
- THSC, §382.012, State Air Control Plan;
- THSC, §382.017, Rules;
- THSC, §382.051, Permitting Authority of Commission; Rules;
- THSC, §382.05102, Permitting Authority of Commission; Greenhouse Gas Emissions;
- THSC, §382.0513, Permit Conditions;
- THSC, §382.0514, Sampling, Monitoring, and Certification;
- THSC, §382.0515, Application for Permit;
- THSC, §382.0518, Preconstruction Permits;
- THSC, §382.05195, Standard Permit;
- THSC, §382.051963, Amendments of Certain Permits;
- THSC, §382.054, Federal Operating Permit;
- THSC, §382.0541, Administration and Enforcement of Federal Operating Permit;
- THSC, §382.0543, Review and Renewal of Federal Operating Permit;
- THSC, §382.055, Review and Renewal of Preconstruction Permit;
- THSC, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing;
- THSC, §382.0561, Federal Operating Permit: Hearing;
- THSC, §382.0562, Notice of Decision;
- THSC, §382.0563, Public Petition to the Administrator;
- THSC, §382.0564, Notification to Other Governmental Entities;
- THSC, §382.062, Application, Permit, and Inspection Fees;
- Texas Water Code (TWC), §5.013, General Jurisdiction of Commission;
- TWC, §5.102, General Powers;
- TWC, §5.103, Rules;
- TWC, §5.105, General Policy; and
- TWC, §5.128, Electronic Reporting to Commission; Electronic Transmission of Information by Commission; Reduction of Duplicate Reporting.

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**A.) Regulated community:**

The regulated community will benefit by receiving renewal notices and proposed final actions sent by electronic communication, which will reduce the time spent by the agency to process and mail such items. Additionally, the regulated community will also benefit from the revisions in the rules since the rules will contain up-to-date requirements and references.

**B.) Public:**

The public may benefit from notice of proposed final actions for FOPs being sent in an electronic format, as it would provide notice in a readily accessible format other than printed copy. The public may also benefit from improved public notice when new facilities are added at certain standard permit facilities. The public will not be significantly affected by the other adopted changes.

**C.) Agency programs:**

The commission will need to develop a system to provide the various notices affected by this rulemaking in an electronic format. In addition, the commission will need to develop a method of verification to ensure that the electronic NSR renewal notices are received by the permit holder. Once implemented, the adopted rules should result in a more cost-effective process due to the reduction of postage and mail-related materials. The agency is not expected to be significantly affected by the other adopted changes.

**Stakeholder meetings:**

No stakeholder meetings were held, although the rule changes were proposed and published for a 30-day public comment period.

**Public comment:**

During the comment period, written comments were received from the Texas Chemical Council (TCC) and the United States Environmental Protection Agency Region 6 (EPA Region 6). TCC provided comments and suggestions relating to the method of providing and verifying receipt of permit renewal notices sent electronically. TCC and EPA Region 6 commented on a proposed provision which would allow the executive director to combine or divide FOPs during a revision. EPA Region 6 requested clarification of the impact of a proposed change which would remove a reference to PAL permits from a subsection of a rule. A public hearing was offered in Austin, but no oral comments were made.

**Significant changes from proposal:**

The only substantive change from the proposed rules is the withdrawal of the proposed amendment to §116.114(c)(3)(A), which would have deleted a reference to PAL permits and added a reference to Federal Clean Air Act (FCAA), §112(g) permits. These changes were withdrawn because, after further consideration, staff believes the existing rule language and corresponding deadline relating to PAL permitting are appropriate, and the proposed FCAA, §112(g) language would not be approvable as a state implementation plan revision without increasing the complexity of the rule.

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**Potential controversial concerns and legislative interest:**

The rule changes addressing registration and public notice requirements for changes at certain facilities authorized by a standard permit may generate interest from regulated entities and the public, because they potentially affect certain types of facilities that the public often objects to, such as rock crushers and concrete batch plants. The other changes in this rulemaking are not expected to be controversial.

**Does this rulemaking affect any current policies or require development of new policies?**

No current policies are expected to be affected, and no new policies are expected to be necessary.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

If this rulemaking does not go forward, commission rules will not be consistent with the statutory changes enacted by HB 4181 relating to how the commission may provide notices to permit holders for NSR permit renewals and for FOP proposed final action notices. This inconsistency could be confusing to the public and the regulated community.

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: May 25, 2018

Anticipated *Texas Register* adoption publication date: November 16, 2018

Anticipated effective date: November 22, 2018

Six-month *Texas Register* filing deadline: November 26, 2018

**Agency contacts:**

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**Attachments:**

HB 4181

cc: Chief Clerk, 2 copies  
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